

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 867 of 1987

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

CHHANABHAI MARGHABHAI

Versus

MAHANT HARIDAS GURU PANCHAMDASJI

Appearance:

1. Civil Revision Application No. 867 of 1987
MRS SIDDHI D TALATI for Petitioners
MR U.P VYAS for
MR BHARAT J SHELAT for Respondent

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 24/10/2002

ORAL JUDGEMENT

This Revision Application has been preferred by the respondent-defendant under section 29 (2) of the

Bombay Rents, Hotel & Lodging House Rates Control Act, 1947 [hereinafter referred to as, "the Rent Act"] against the judgment and order dated 7th August, 1987 passed by the learned Assistant Judge, Nadiad in Civil Appeal No. 175 of 1983.

The plaintiff is the sole trustee and the administrator of a Public Charitable Trust known as Kabirpanthi Trust [hereinafter referred to as, "the Trust"]. The Trust owns certain property in the town of Nadiad. Two of the rooms of the said property bearing municipal census nos. 1134/10 & 1134/11 were leased to one Ambalal Desaibhai for a monthly rent of Rs. 12/=. The ward of the tenant Ambalal, the defendant no. 1 and the mother of the defendant no. 1, the defendant no. 2, were residing in the suit rooms with the said tenant Ambalal Desaibhai. Though the defendants were not the members of the family of the said Ambalal, they continued to occupy the suit rooms for their residence after the death of the said Ambalal. On 9th October, 1974, the Trust gave the defendants a notice of demand as envisaged under section 12 (2) of the Rent Act. In the said notice, the Trust mentioned that the defendants were given the last warning; that the defendants were in arrears of rent since 6th May, 1973, and that the monthly rent was Rs. 12/=. The suit notice [Exh. 66] was answered by the defendants by reply dated 15th October, 1974 [Exh. 69]. It was denied that the defendant no. 2 was not the wife of the deceased Ambalal Desaibhai. It was claimed that the defendant no. 2 was the wife of the deceased Ambalal Desaibhai and was entitled to claim tenancy in the suit rooms. The defendant no. 1 being son of the defendant no. 2, was entitled to claim tenancy in the suit rooms. It was denied that the defendants were in arrears of rent. It was stated that the defendants had paid the rent, however, no receipt was issued to them. The defendants did not pay the rent demanded under the suit notice Exh. 66. The Trust instituted Regular Civil Suit no. 476 of 1978 in the court of Civil Judge [JD], Nadiad. The trust prayed for recovery of possession of the suit rooms and a sum of Rs. 432/= being the amount of rent due. The claim for a sum of Rs. 354/= being the outstanding amount of rent was not made since the same was time-barred. Pending the suit, the defendants deposited a sum of Rs. 432/= claimed in the plaint in the Court on 5th December, 1978. Since then, the defendants deposited the monthly rent in the Court regularly. However, it should be noted that the defendants did not deposit the sum of Rs. 354/=, the time barred amount of rent due.

The suit was contested by the defendants by filing written statement Exh. 20. It was asserted that the defendant no. 2 was the wife of the deceased defendant-Ambalal Desaibhai. It was denied that the rent was due since 6th May, 1973.

The learned trial Judge dismissed the suit for possession under the judgment and order dated 30th July, 1983. The learned Judge decreed the suit for recovery of the sum of Rs. 432/= being the amount of arrears of rent. The learned Judge was of the opinion that the suit notice was not legal and valid for the reasons : [a] the defendants were not specifically informed that it was a last opportunity; [b] no specific demand of rent due was made; [c] the defendants were alleged to be in arrears of rent since 6th May, 1973. However, though it was found that the deceased-defendant Ambalal Desaibhai had paid rent till 5th June, 1973. The learned Judge also held that the case was not governed by section 12 (3)(a) of the Rent Act. According to the learned Judge, the Trust had, vide Receipt No. 356 [Exh. 65], accepted a sum of Rs. 1224/= from the deceased tenant Ambalal Desaibhai, being the amount of rent for the period of eight years and six months. Hence, the rent cannot be said to be paid by the month. As to the protection conferred upon the tenant under section 12 (3)(b) of the Rent Act, the learned Judge held that the tenant had deposited a sum of Rs. 432/=, the rent demanded, before the first day of hearing of the suit and had thereafter regularly deposited the rent in the Court.

Feeling aggrieved, the Trust preferred Regular Civil Appeal No. 476 of 1978 in the District Court, Kheda. The learned Assistant Judge, Kheda under the impugned judgment and order dated 7th August, 1987 allowed the appeal and passed the decree for possession. Feeling aggrieved, the defendants have preferred the present Revision Application.

The Court below has held that the suit notice did specifically mention that it was 'the last warning' to the defendants; the demand for the arrears of rent made in the suit notice was specific and precise. The suit notice was, therefore, legal and valid. The Court below was also of the opinion that the case is governed by section 12 (3)(a) of the Rent Act. All the conditions mentioned in section 12 (3)(a) were satisfied, the decree for possession should necessarily follow. The Court below also observed that the defendants were not entitled to protection under section 12 (3)(b) of the Rent Act

since admittedly, the defendant did not pay the entire amount of rent due in the Court. What was deposited in the Court was sum of Rs. 432/=, the rent demanded in the suit. Though the sum of Rs. 354/= was not demanded in the suit, since the same was time barred, to earn protection under section 12 (3)(b) of the Rent Act, the tenant was not required to deposit the amount of rent demanded in the suit but also any other amount of rent due which may not be demanded, as being time-barred.

I am of the view that the learned trial Judge was not right in holding that the suit notice was not legal and valid. The Division Bench of this Court in the matter of Khimji Bhimji Majithia v. Taraben Lalji Soni [XXIII (2) GLR 114] had said that, "...notice must contain specific demand of rent. It must tell the tenant that this is the last opportunity afforded to the tenant to pay up the arrears." The said judgment has been considered and explained by the learned Single Judge of this Court in the matter of Rambhai Jhenidas Panchal v. Lalitaben Wd/o. Ramanlal Panchal [XXII (2) GLR 545]. The learned Judge in paragraph 6 of the judgment observed that, "...It is not the intention of the Division Bench of this Court to import something more than what has been enacted in sec. 12 (2) of the Act and require the landlord to state in specific words that this is the last opportunity given to the tenant. The ultimate intention of the Legislature is that the landlord should give last opportunity to the tenant to pay the arrears of rent and not that the last opportunity should be mentioned in so many words that this is the last opportunity given." Though the learned trial Judge had considered both the above judgments, had failed to follow the principle laid down in these judgments. Besides, in the present case, the suit notice [Exh. 66] does mention in so many words that it was the "last warning". As to the demand of the outstanding rent also, the learned trial Judge erred in holding that there was no specific demand made in the suit notice. The suit notice does mention that the rent was due since 6th May, 1973 and that the monthly rent was Rs. 12/- per month. Thus, in my view, the suit notice was specific in material particulars and cannot be said to be vague.

Similarly, the notice cannot be invalidated merely on the ground that ultimately the rent was not found due from 6th May, 1973 as stated in the suit notice but was due from 6th June, 1973. In the matter of Labhabhai Vithaldas v. Laxmidas Vithaldas [IV GLR 567], in the similar circumstances, it has held that, "the notice itself does not become invalid so as to take away

the right of the landlord to institute the suit one month after the notice. It is the fact of the notice which is important under sec. 12 (2) and not the correctness of the contents of the notice." Thus, the Court below has correctly held the suit notice to be legal and valid.

As to the conditions specified in section 12 (3) (a) of the Rent Act also, the learned trial Judge has erred in holding that the rent was not payable by the month. Merely because the deceased-tenant Ambalal Desai bhai paid the rent for eight years and six months in lumpsum and the same was accepted by the Trust, the rent does not cease to be payable by the month. The Court below has rightly held that all the conditions specified in section 12 (3)(a) of the Rent Act were satisfied. The decree for possession, therefore, should necessarily follow.

Further, admittedly, the defendants failed to deposit the arrears of rent in the Court. The defendants, therefore, cannot claim protection under section 12 (3)(b) of the Rent Act either. It is not the rent demanded which is required to be deposited. Section 12 (3)(b) of the Rent Act stipulates payment of rent due before the first day of hearing of the suit. The rent due must mean the entire amount of rent due and not only such amount which is recoverable, excluding the amount, the recovery of which is barred by Law of Limitation. This Court in the matter of Vora Valibhai Sakkarbhai v. Dhanlaxmi wife of Chimanlal Gordhandas [1976 All India Rent Control Journal p-475] has considered the question. This Court relied upon the judgment of the Bombay High Court in the matter of Ramrao Palkar v. Amir Kasam Bhagwan [58 Bombay Law Reporter 284] and quoted with approval, "...The words 'rent then due' in Section 12 (3)(b) of the Bombay Rents, Hotel & Lodging House Rents Control Act, 1947, mean all rent in arrears or outstanding, including rent which cannot be recovered through the process of the Court owing to the bar imposed by the Indian Limitation Act, 1908." This Court has held that to earn protection under section 12 (3)(b) of the Act, the tenant is required to deposit in the Court before the first day of the hearing of the suit, the amount of rent due. The contention that, "whatever rent was claimed in the suit was deposited and consequently the tenant was entitled to protection under section 12 (3)(b) of the Act" was negatived. It was held that, "...It is significant to note that in the notice, which is required to be given under section 12 (2) of the Act, such a demand was made. That fact was also mentioned in the suit. So far as that money claim is concerned, the

landlady could not claim it as it was time-barred at the date of the suit." The Court held that, "...The appellate Court was, therefore, fully justified in reaching the conclusion that on account of non-depositing the aforesaid amount which has become time-barred, the tenant was not entitled to protection under section 12 (3)(b) of the Act." In the present case also, admittedly, a sum of Rs. 354/= was due from the defendants being the outstanding amount of rent, recovery of which had become time-barred. Nonetheless, the defendants, to meet the conditions mentioned in section 12 (3)(b) of the Act were required to deposit the said amount. Admittedly, such amount having not been paid, the defendants were not entitled to protection under section 12 (3)(b) of the Rent Act also.

In my view, the Court below has correctly applied the law to the existing facts and has rightly passed the decree for possession. The Revision Application is, therefore, dismissed with costs. Rule is discharged. Interim stay is vacated.

[Miss R.M Doshit, J.]

Prakash*